



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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APR 10 2003

Paper No. 31

In re Application of :  
Matthew G. Howell : DECISION ON PETITION  
Application No. 08/987,005 :  
Filed: December 8, 1997 :  
Attorney Docket No. MCT.010700US :  
(MUEI-0336.00/US)

This is a decision on the petition filed on September 30, 2002 that was recently forwarded to the undersigned by the Office of Petitions. The petition is properly considered under 37 CFR 1.181 as a petition to withdraw the holding of abandonment. No fee is required for the petition, and a refund of the \$130.00 petition fee will be made in due course.

The petition is granted.

This application was held to have become abandoned for failure to file a proper reply to the Office letter dated January 2, 2002. Petitioner alleges that the application was not in fact abandoned because a timely reply to the Office letter in question, in the form of a request for filing a Continued Prosecution Application (CPA) was in fact filed. This allegation is supported by a copy of the reply, and by a copy of the filing receipt for the reply which shows that the reply was in fact received in the Office on April 2, 2002. Petitioner should note that reliance upon the included copy of an Express Mail Label would have been ineffective absent the copy of the post card (filing receipt), because the copy of the CPA as submitted with the petition does not include the Express Mail Label No. See 37 CFR 1.10 and MPEP § 513. It is also noted that Office financial records show the receipt of the \$740.00 fee tendered with the CPA on April 2, 2002.

Petitioner is further advised that the filing of a CPA in this application was improper. 37 CFR 1.53(d) indicates that a CPA pursuant to that regulation cannot be filed in any application filed on or after May 29, 2000. Here, the record shows that a previous CPA was in fact filed on October 12, 2000. See MPEP § 201.06(d), in particular, page 200-43. However, Office policy is to treat an improperly filed CPA as an Request for Continued Examination (RCE) filed under 37 CFR 1.114. See MPEP §§ 201.06(d) at page 200-41 and 706.07(h). A review of the papers filed on April 2, 2002 shows that they in fact qualify as a properly filed RCE because there had been a final rejection (prosecution was closed), petitioner requested entry of the previously filed amendment after final action (a submission accompanied the filing of the RCE), and a \$740.00 fee was tendered with the papers.

In view of the timely filing of an RCE, it is clearly established that this application was not in fact abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for the following actions:

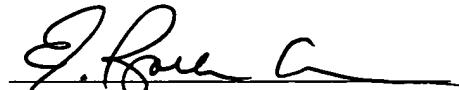
1. Refund the \$130.00 petition fee.
2. Conversion of the RAM system entry for April 2, 2002 so that the \$740.00 fee is shown as having been remitted for the filing of a RCE, rather than a CPA.

3. Processing of the papers entitled CPA as filed on April 2, 2002 as a properly filed RCE, for which the fee has been paid. This processing will include entry of the amendment previously filed on February 20, 2002.

4. Correct the PALM system to show the spelling of applicant's given name as Matthew (with two t's)

Thereafter, the application will be forwarded to the examiner for action on the reply filed on February 20, 2002.

PETITION GRANTED.

  
E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

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